



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**SUCCESSION CAUSE NO. 651 OF 2010**

**IN THE MATTER OF THE ESTATE OF KIOKO KILUU KILEI (DECEASED)**

**ROBERT MUSYOKI KIOKA .....PETITIONER/APPLICANT**

**RULING OF THE COURT**

1. The Notice of Motion application before the court is dated and filed herein on **13<sup>th</sup> July, 2016**. It prays for an order reinstating the cause of action which was dismissed pursuant to a Notice to Show Cause which however was not specific as to which date the applicant was required to attend court to show cause.
2. The application is not opposed. I have looked at the Record. The Notice to Show Cause is dated **23<sup>rd</sup> day of June, 2015**. The Notice states that the suit would be dismissed if the applicant did not show cause why it should not be dismissed between **6<sup>th</sup> – 25<sup>th</sup> July, 2015**.
3. To say the least, that is not the kind of notice which when not complied with should lead to dismissal of a cause of action. The said Notice was bad in law, being non specific.
4. I therefore allow the application as prayed, and direct the applicant to set down the matter for Confirmation of Letters of Grant within sixty (60) days.

Order accordingly.

**DATED AND DELIVERED AT MACHAKOS THIS 8<sup>TH</sup> DAY OF DECEMBER, 2016.**

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**E. OGOLA**

**JUDGE**

**In the presence of:**

Mr. Mutune holding brief for Kisongee for Petitioner/Applicant

Court Assistant – Mr. Munyao